

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	
-against-	:	18cr906
AGUSTIN ARREOLA FRASCO and	:	<u>MEMORANDUM & ORDER</u>
EDUARD VEISYAN,	:	
Defendants.	:	
	:	

WILLIAM H. PAULEY III, Senior United States District Judge:

Defendant Eduard Veisyan moves to suppress physical evidence seized prior to his arrest and various statements he made before receiving Miranda warnings. For the following reasons, Veisyan's motion to suppress is denied.

BACKGROUND

In the months leading up to December 2018, Special Agent Drew Greeley of the Drug Enforcement Administration and other law enforcement officers ("LEOs") worked with a confidential source (the "CS")¹ to set up a narcotics deal targeting a Mexican drug trafficking organization (the "DTO"). (Compl. ¶¶ 5–9.) As a result of that set-up, LEOs seized methamphetamine from and arrested Veisyan and his co-defendant, Agustin Arreola Frasco.² (Compl. ¶ 9.)

During their investigation of the DTO, Greeley and other LEOs became aware that Frasco had ties to that organization. (Compl. ¶ 6.) Based on cellphone toll data, they

¹ The CS pled guilty to a federal narcotics offense pursuant to a cooperation agreement in 2017. (Compl., ECF No. 1 ("Compl."), ¶ 5 n.1.) LEOs have deemed him credible and information he has provided in the past has led to drug seizures. (Compl. ¶ 5 n.1.)

² On September 5, 2019, Frasco pled guilty to violating 21 U.S.C. § 841(b)(1)(C).

learned that Frasco had been in contact with a known active member of the DTO. (Compl. ¶ 7.) Further, in September 2018, LEOs seized approximately 10 kilograms of heroin from an individual involved with the DTO. (Compl. ¶ 6.)

In October 2018, the CS and Frasco were recorded on a phone call discussing a warehouse that could receive a large shipment of narcotics for distribution in New York City. (Compl. ¶ 8(a).) The CS offered to show Frasco a suitable warehouse in New Jersey. (Compl. ¶ 8(a).) During that call, the CS and Frasco used coded language to discuss narcotics. (Compl. ¶ 8(a).) No transaction occurred in October 2018.

However, on December 4, 2018, Frasco called the CS—again on a recorded line—to discuss a possible narcotics transaction. (Compl. ¶ 8(b).) The CS and Frasco used coded language, and the CS told Frasco that he was willing and able to purchase narcotics and that the transaction could take place at a warehouse located in Kearny, New Jersey. (Compl. ¶ 8(c).) But unbeknownst to Frasco, the LEOs handpicked the Kearny warehouse. (Aug. 7, 2019 Hearing Tr., ECF No. 35 (“Hearing Tr.”), at 60:11–20.) Frasco stated that he would need to inspect the warehouse to confirm that it could accommodate the DTO’s tractor-trailer (the “Truck”) before any sale could take place. (Compl. ¶ 8(d).) Notably, all calls between the CS and Frasco on December 4 and 5, 2018 were listened to contemporaneously by Agent Greeley. (Hearing Tr. at 60:21–61:8.) Although those calls were in Spanish and Agent Greeley only “underst[oo]d a very small part” of them, the CS contacted Agent Greeley after each call and summarized the conversations. (Hearing Tr. at 60:21–61:8.)

On the evening of December 4, 2018, the CS and Frasco met at a pre-determined location—a Wal-Mart parking lot—and drove together to the Kearny warehouse. (Compl. ¶ 8(e).) Frasco approved the warehouse for the transaction. (Compl. ¶ 8(e).) Frasco then told

the CS that the Truck carrying narcotics was about an hour away, and the CS drove Frasco back to the Wal-Mart parking lot. (Compl. ¶ 8(f).)

Thereafter, LEOs conducted physical surveillance of the warehouse and observed Frasco waiting in a vehicle by himself. (Compl. ¶ 8(g).) Before the Truck arrived, Frasco and the CS were in regular communication over a recorded phone line to discuss the whereabouts of the Truck. (Compl. ¶ 8(h).) On multiple occasions, Frasco stated that the Truck was delayed or lost. (Compl. ¶ 8(h).) Frasco described the Truck to the CS as “white” at some point prior to its arrival. (Hearing Tr. 21:18–22.)

At approximately 12:30 a.m. on December 5, 2018, Frasco told the CS that the Truck should arrive at the warehouse in about 10 minutes. (Compl. ¶ 8(i).) The CS responded that he would exchange money for the incoming narcotics at the warehouse. (Compl. ¶ 8(i).) At approximately 12:45 or 12:50 a.m., LEOs observed a white tractor-trailer arrive and stop in front of the warehouse. (Compl. ¶ 9(a).) The LEOs then observed Frasco approach and speak to the driver, who turned out to be Veisyan. (Compl. ¶ 9(a).) After speaking with Veisyan, Frasco called the CS to tell him that the Truck carrying narcotics had arrived, and the CS called Greeley to relay that message. (Hearing Tr. at 61:5–8.) LEOs descended on Frasco, who was standing on the street, and Veisyan, who was sitting in the Truck. (Compl. ¶ 9(b).) After conducting a search, the LEOs recovered methamphetamine inside a cubby in the cab of the Truck. (Compl. ¶¶ 9(c)–(e).) LEOs assert that Veisyan consented to that search of the Truck. (Compl. ¶ 9(b).)

Now, Veisyan argues that the seized methamphetamine should be suppressed because his consent was invalid. Specifically, he argues that he speaks limited English and did not understand that he was consenting to a search. In addition, he argues that he did not receive

Miranda warnings prior to consenting.³ However, the Supreme Court has held that physical fruits of unwarned but voluntary statements should not be suppressed. See United States v. Patane, 542 U.S. 630, 639–41 (2004). Moreover, the Government argues that because the automobile exception applies, a warrantless search was reasonable and Veisyan’s consent was unnecessary. Veisyan counters that LEOs did not have probable cause to search the Truck.

The automobile exception “permits law enforcement to conduct a warrantless search of a readily mobile vehicle where there is probable cause to believe that the vehicle contains contraband.” United States v. Navas, 597 F.3d 492, 497 (2d Cir. 2010). “The Supreme Court has justified the automobile exception under two distinct theories: First, the Court has noted that a person’s expectation of privacy in a vehicle is less than his or her expectation of privacy in a home, and, second, the Court has held that because a vehicle is readily movable, exigent circumstances might require a warrantless search.” United States v. Howard, 489 F.3d 484, 492 (2d Cir. 2007) (citations omitted). And “[w]here the probable cause upon which the search is based extends to the entire vehicle, the permissible scope of a search pursuant to this exception includes every part of the vehicle and its contents [including all containers and packages] that may conceal the object of the search.” Navas, 597 F.3d at 497 (quotation marks omitted) (alteration in original). Notably, the Second Circuit held that the automobile exception applied to a trailer that was “unhitched from its cab and parked in a warehouse.” Navas, 597 F.3d at 494. It is clear the automobile exception applies here because the narcotics were found in the cab of the truck. Therefore, the key dispute is whether LEOs had probable cause.

To establish probable cause, LEOs—based on a totality of the circumstances—must have had “knowledge [or] . . . reasonably trustworthy information . . . sufficient in

³ Veisyan also seeks to suppress certain pre-Miranda statements, but the Government does not seek to offer them, so that portion of his motion is denied as moot.

themselves to warrant a man of reasonable caution in the belief" that the Truck contained contraband. Carroll v. United States, 267 U.S. 132, 162 (1925); Howard, 489 F.3d at 491. Here, the probable cause is clear. The LEOs set up the transaction with Frasco through the CS, who previously provided reliable information used to seize narcotics. Further, LEOs contemporaneously communicated with the CS while he spoke with Frasco to plan and execute the transaction. The CS's information proved to be credible throughout the transaction—Frasco met the CS at the Wal-Mart parking lot before they went to the warehouse and was observed waiting at the warehouse. And after surveilling that warehouse for approximately four hours, Agent Greeley observed no traffic other than Frasco's vehicle and the Truck. (Hearing Tr. 22:10–23:5.) Moreover, not only did Frasco describe the Truck as white, but he also called the CS to tell him that the Truck carrying narcotics had arrived. The CS relayed that message to Greeley contemporaneously while LEOs observed Frasco speaking with the driver of a white tractor-trailer that arrived at the LEO-chosen warehouse around the time Frasco said it would arrive. (See Compl. ¶ 8(a)–(i); Hearing Tr. at 60: 60:21–61:8.) Accordingly, LEOs had sufficient probable cause to conduct a warrantless search, with or without consent.

CONCLUSION

For the foregoing reasons, Veisyan's motion to suppress is denied. The Clerk of Court is directed to terminate the motions pending at ECF Nos. 24, 37, and 38.

Dated: September 9, 2019
New York, New York

SO ORDERED:



WILLIAM H. PAULEY III
U.S.D.J.